

1 NOT FOR PUBLICATION
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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jacob Aaron Galbreath,
10 Petitioner,

11 v.

12 Ronda Fisk, et al.,
13 Respondents.
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No. CV-18-02794-PHX-SRB(CDB)

ORDER

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16 Petitioner, Jacob Aaron Galbreath, filed his Amended Petition for Writ of Habeas
17 Corpus on October 19, 2018 claiming entitlement to habeas relief based on alleged Fourth
18 Amendment violations, prosecutorial misconduct, pre-indictment delay and denial of due
19 process. Respondents filed a Limited Answer arguing that the claims asserted by Petitioner
20 were not properly exhausted in state court and were waived by his guilty plea. The
21 Magistrate Judge issued her Report and Recommendation on October 15, 2019 finding that
22 Petitioner procedurally defaulted his claims by failing to appeal the denial of his state
23 Petition for Post-Conviction Relief to the Arizona Court of Appeals and made no colorable
24 allegations of any cause for his procedural default and of any prejudice for failure to
25 consider the merits of his claims or established a claim of factual innocence. The Magistrate
26 Judge also found that Petitioner's claims were waived by his knowing and voluntary guilty
27 plea.

28 Petitioner filed a timely written objection to the Report and Recommendation.

1 Respondents filed a Response to the Objection. In his Objection, Petitioner only reargued
2 the claims asserted in his habeas petition. He failed to address his failure to exhaust or the
3 waiver of his claims by his guilty plea. He points to no factual or legal error in the
4 Magistrate Judge's Report and Recommendation and the Court finds there are none.

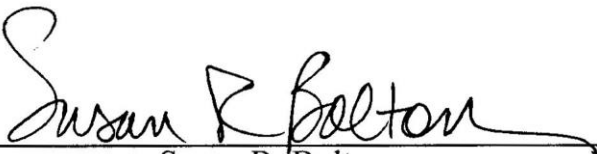
5 IT IS ORDERED overruling Petitioner's Objection to the Report and
6 Recommendation of the Magistrate Judge.

7 IT IS FURTHER ORDER adopting the Report and Recommendation of the
8 Magistrate Judge as the Order of this Court.

9 IT IS FURTHER ORDERED denying a Certificate of Appealability because the
10 dismissal of the Petition is justified by a plain procedural bar and jurists of reason would
11 not find the procedural ruling debatable and because Petitioner has not made a substantial
12 showing of the denial of a constitutional right.

13 IT IS FURTHER ORDERED directing the Clerk to enter judgment accordingly.
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15 Dated this 27th day of November, 2019.
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20 Susan R. Bolton
21 United States District Judge
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